

Home Truths: An Introduction to the Renters' Rights Bill

Iris Ferber KC: Hello and welcome to Home Truths, the Housing Law podcast from 42BR Barristers. My name is Iris Ferber KC.

Karolina Zielinska: And I'm Karolina Zielinska.

IFKC: And this is the first in a series of podcasts that we're going to present about the Renters' Rights Bill. Today, we're going to be introducing the history of the bill, some of its themes, and we're going to be talking about landlord and tenant rights in other countries.

KZ: I should say at the outset, please do note that we're talking today about the law as it is at the 30th of January 2025 and what the Renters' Rights Bill looks like today. It does concern the housing law of England. Whilst we will be making some international comparisons in the course of this podcast, we aren't specialists in the housing law of everywhere.

IFKC: Definitely not.

KZ: And I should say also, the contents of this podcast are not intended as legal advice, although you are always welcome to get in touch if you need assistance with a specific situation.

IFKC: Okay, so caveats aside, let's also let everybody know that after today we've got a few more podcasts coming, also about specific parts of the Renters' Rights Bill. So please do join us on Home Truths, the Housing Law Podcast from 42BR Barristers to hear about those specific parts of the Renters' Rights Bill once you've listened to this introduction.

KZ: But perhaps first, a brief background to the Renters' Rights Bill. The Renters' Reform Bill was first introduced to Parliament in May 2023, but it didn't pass before the Labour government came in earlier last year. So, Labour then reintroduced it as the Renters' Rights Bill in September 2024, with some significant changes.

As of this year, consideration of that bill has now moved to the House of Lords. It's on what's known as the second reading stage. There are a couple more stages that it will need to pass through before it can enter into law. In particular, a further

committee and report stage, another reading in the House of Lords, and then we reach the stage where effectively it's battered back and forth between the Commons and the Lords until a version of it is reached that hopefully everybody is happy with.

The current published version available on the government website is dated the 15th of January 2025, but we are of course talking today about the law as at the 30th of January. It may well go through some more significant changes before it's brought into force.

IFKC: Absolutely, and because this is a series of podcasts, if as we go along in our podcast series there are changes to the bill, we'll certainly be reflecting those as we chat. Politics being what it is we just have no idea, as things are today, how this bill might change between now and when it becomes law.

KZ: Absolutely.

IFKC: Okay, so Karolina, what's this bill about? Should we start with some statistics?

KZ: Yes, yes.

IFKC: It's got 149 sections. It's got six schedules. The PDF of the bill, as it currently looks, is 250 pages.

KZ: That is a very hefty piece of proposed law.

IFKC: It is a hefty bill and it's due to become a hefty, significant, piece of legislation once it's turned into law. Potentially, it can affect, it is likely to affect 11 million people. There are 11 million assured shorthold, private renters in England. I say England rather than England and Wales, or the UK or Britain because housing law is something that is specific to England. Wales has different law. Scotland has different law. Northern Ireland has different law. But even just in England, there are 11 million people potentially affected by the changes that this bill is going to bring in.

The ethos of the Renters' Rights Bill, and to be fair, it was also the ethos of the Renters' Reform Bill before it, which the Conservative government initially tabled, is a wholesale move, a real change, towards a system where no fault evictions are no longer an option, they're banned.

And what does that mean? That means that if a landlord wants to evict a tenant, they have to give a particular ground, a particular reason for doing that, and those reasons are all laid out in what is currently the Renters' Rights Bill. By way of making changes to the grounds for possession in what we already know as Schedule 2 to the 1988 Housing Act. So the Renters' Right Bill will expand that list of grounds to a much larger list because it's intended to take into account every possible reason that a landlord could want for evicting because of the removal of no fault eviction.

So that's the headline of the Renters' Rights Bill. It also tackles a whole range of other matters as well as that headline of no fault evictions, including strengthening the law on private landlord and tenant disrepair, introducing a previously completely unknown type of discrimination, discrimination against tenants with children, with pets, and tenants who are on benefits, and there are a whole slew of regulatory changes which the bill proposes to bring in, including the setting up of a database of private landlords and the creation of a private rented sector ombudsman.

So, whistle stop tour of the broad themes of the bill, what next, Karolina?

KZ: Well, you may well be wondering how common it is to have some of these themes in the housing law of other countries around the world, including, for example, no fault evictions or the creation of a landlord's database. We've looked into some of these systems in other countries to provide some context to the proposals in the Renters' Rights Bill.

We have done our research, as I've said before, but we're not specialists in the housing law of any country other than England, so please do take our overview with a pinch of salt. But perhaps if we start looking at, let's say, rent controls?

IFKC: Yes, rent controls...we tend to think of rent controls as something of the 1970s and 80s in this country with the Rent Acts that were abolished and haven't been a part of English law since 1988, since the coming into force of the Housing Act 1988. My, sort of, geographical area, Karolina, that I was looking into before this podcast was the United States.

And in the United States, listeners may know, rent controls are actually very common. Just pausing there to say that I was overwhelmed by the variety of law between the different states of the United States. I don't think I'd quite appreciated how very different the law is from one state to the next. And so, for example, in relation to rent controls in the United States, it is so widespread that

even Colorado, which is considered to be a very landlord friendly regime, even that has the sort of rule that we have here, which is that rent increases, formal rent increases, can only take place once a year.

So, equivalent to our section 13 notice type of regime. So, there is, in that limited extent, even in very landlord friendly states, there is rent control. In other states, which are much more tenant friendly - New York, California, Oregon - there are very strict statewide rent controls. So that means not just a particular city imposing rent controls or a particular county or municipality, but the entire state has a rule which cannot be avoided of rent controls.

And that tends to mean a percentage cap on annual increases and often a long period of notice before that rent can come into effect. The common numbers are between 5 and 10 percent per annum cap on rent increases, but in Washington D. C., if you are disabled or elderly, there is a 2.9 percent cap on rent increase. Very, very low.

KZ: Interesting, so the system very heavily weights itself in favour of vulnerable tenants then.

IFKC: In Washington D. C. in particular, that is the only, I mean, if I've got this wrong, American lawyers listening, forgive me. But as far as I've been able to work out from my research, it's only Washington, D. C. that has two rates, one for the disabled and elderly, and another one for everybody else.

KZ: I've seen in, so I was looking into European systems, and certainly I've, in those that do have rent controls, one other part of an identified vulnerable group that often is particularly protected when it comes to rent controls is also students. I have come across the odd country where provision is made for students and then also typically disabled and elderly tenants to have specifically applicable rules.

But, broadly, the rent control system I found most interesting was that of the Netherlands. This is a relatively new system. It was extended to much more of the rental property market within the Netherlands in mid to late last year. And, essentially, it's a points based system. So, every single property to which these controls apply has points allocated for features of that property.

So, for example, if you have a certain number of bedrooms, if you've got outdoor space, if you've got a very energy efficient property or a particularly fancy kitchen or bathroom, all of these are things...

IFKC: ...that can give you more rights.

KZ: Precisely. And there's a form you could fill out on, I think it's the Dutch government website or some associated body. My apologies, listeners, I do not speak Dutch.

IFKC: Even Dutch isn't good enough to fill in the form.

KZ: But I did have a look at it and you can input all these features of your property to give you, either as a tenant or a landlord, an idea of what equivalent rent you should be allowed to charge based on those points.

And there is a cap on the number of points, 186. Once you've reached that point, which is about 1, 123 euro a month in rent, if your property's worth that or above, then the landlord's free to set the rent.

IFKC: So that's kind of the highest quality, most energy efficient, least out of repair properties, presumably.

KZ: But from what I've read, that covers a fairly small percentage of the available housing stock for rent in the Netherlands. So really, most of the properties will fall within some degree of these rent controls. But it's very precise, and I thought that was quite an unusual system to have.

IFKC: It does seem, potentially, very complicated, doesn't it? And it sounds, obviously there must be a system for challenging the points awarded or for disagreeing with your tenant if they're saying, you know, the place is infested with cockroaches and it isn't infested, then you have to be able to challenge that. So it sort of creates an opportunity for people to argue about something.

KZ: It does. So if you are being overcharged as a tenant, you can complain and have your rent lowered if your tenancy is a newer one in particular, it really it's quite an interventionist system, and I think the purpose of that form is to give a bit more clarity for everyone as to how those controls might be applied.

IFKC: Fascinating. I mean, it's, we don't have anything like that, and in fact I'm not sure any other country has anything quite as complex as that system. Thanks Karolina, that really is very, very interesting. What about termination? I mean, the headline of the Renters' Rights Bill, as it was of the Renters' Reform Bill, is the ending of Section 21, the ending of no fault evictions.

Should I tell you a little bit about what I found out about the United States and the different states of the United States relating to termination of tenancies?

KZ: Please, yes.

IFKC: So, a couple of really interesting things is that, firstly, that most states have a termination for cause system, i.e., that you have to have a reason, i.e., not a no fault eviction type system. That's true in, I think, almost all states, I'm going to come back to one particularly unusual example of where that *isn't* the case, but most states there has to be a reason. But one of the reasons that is commonly used and is allowed is the end of the fixed term of your tenancy.

So that's, I think, actually, if you sort of translate that into English law, that's what we normally think of as a Section 21 notice served on the tenant to take effect at the end of the fixed term. We don't have a ground for possession that is end of fixed term of a tenancy. We think of that as a no fault eviction.

Well, most of the states of the United States do allow for that. It's just that that's one of the four cause types of eviction that the American states each have. That seems to be pretty uniform across the states. They also have a really interesting system for, well interesting to us property lawyers, interesting system of notices, it's not just a notice to quit.

KZ: Yes.

IFKC: They have something that feels a bit to me like our forfeiture process. Section 146 type, notice type of procedure, which is a landlord of a tenant, a residential tenant in most states in the United States, has first to serve a remedy the breach or leave notice, a notice to remedy or quit, they call it in some states.

So it's not just a notice to quit. It's a three day notice if it's Colorado and Florida, or it's a seven day notice in Alabama, or a five day notice in Arizona to say, pay the rent that is late, or fix the thing that you've broken, or stop bothering your neighbours, whatever the problem is, do that within 3 days, 5 days, 7 days, whatever the limit is, or leave.

And if the person does not remedy, and then does not leave, then, in some states, you have to serve a further notice to quit. In other states, you can go straight on to issue a claim in court for eviction. So they have a different way of thinking about notices, I think, it sounds like, in the United States.

KZ: They are very short timescales.

IFKC: Very short timescales. And in Georgia, which is considered to be the most landlord friendly state in terms of the legal regime in the United States, there is no notice requirement. So, the day after your rent payment, Karolina, if you haven't paid your rent on the first of the month, on the second of the month, the landlord in Georgia can issue a claim for possession.

KZ: Goodness.

IFKC: No notice requirements.

KZ: That is fairly inflexible.

IFKC: Which is pretty inflexible. Most extraordinarily, I know you're dying to tell me about the European ones, this is the final point on the American side of things. In Mississippi, only in Mississippi, the only state in the United States where this can be done, you can have what they call self-help evictions, which in this country we would call an unlawful eviction without going to court.

So in Mississippi you are allowed, at the end of a fixed term, to just go in yourself, without bailiffs, without going to court, and just remove the tenant.

KZ: Wow. That is very different to the current system that we have in England.

IFKC: And it's different to most of the systems in the United States. Mississippi is completely different, apparently, to any other state in allowing this to happen.

KZ: Well, it's very interesting to compare and contrast. I suppose that all of these different systems can work well, but have certain advantages and downsides, both for tenants and landlords alike.

Certainly, when it comes to no fault eviction in Europe, many European countries have already taken steps to ban it outright: Switzerland, Germany, the Netherlands, it's quite common across Europe.

IFKC: Is that something that they've done recently, or is that something that's a long established thing?

KZ: It really does vary, and I think a lot of the more significant pieces of legislation that relate to, for example, we were talking about rent controls earlier, that's all a

bit more recent as the housing crisis in a lot of countries starts to bite in the bigger cities.

IFKC: And perhaps with the pandemic, there was a, you know, in 2020 and onwards, governments were very aware of the problems for tenants arising from eviction.

KZ: Absolutely. So, Greece was very interventionist when it came to improving tenant rights over the pandemic and putting caps on rent payable for that period specifically.

It is interesting to see how different governments responded to that given it was such an emergency situation. In terms of existing no fault eviction though, really Ireland is one of the only European countries that's maintained that sort of a system. As we mentioned earlier, really what is no fault eviction has a bit of a question mark above it because as you said in the United States, some areas might consider the ending of a fixed term to be a specific reason for eviction, whereas here in England, that is viewed more as a no fault sort of situation, so it's difficult really to say whether countries still maintain a no fault system because it's a question of definition as to what they call no fault rather than an objective standard really.

But certainly there's quite a lot of similarity across different countries in Europe in the way they approach no fault evictions and the general trend is that more specificity in the grounds for eviction is required rather than less.

IFKC: What about deposits? I mean, I know we have an exceptionally, I think it is an exceptionally complex system for deposits, which is built up really since the Housing Act 2004 first came into force. In the United States, there is, I think, a relatively straightforward set of systems in the different states. Mainly there is, most states have some limit on the amount of a deposit between one and one and a half months rent, and in most states, the landlord has to keep the deposit in a separate account that bears interest, and they have a certain time limit either 14 days I think is the shortest in Arizona, or 60 days is the longest in Alabama, within which time they have to return the deposit to the tenant after the end of the tenancy. So there isn't a separate tenancy deposit scheme regime but there is a requirement to hold the deposit as a stakeholder and to return it within a deadline after the end of the tenancy.

And that's basically the system and there are some states where there are no such rules, but most states have some version of those rules. What does it look like in Europe for deposits?

KZ: Well, I suppose there are some countries that deal with things in quite a similar way to what's being proposed in the current Renters' Rights Bill.

So, in particular, the bill has currently a provision that one can't accept more rent in advance than about one month's rent in most cases. That is to try and avoid a situation where people are forced to offer six plus months in advance to try and secure a property when competing against other prospective tenants.

So, in the Netherlands, in 2023, an act called the Good Landlordship Act, I love that name, was introduced, which provided that the maximum deposit a landlord can take from you is two times your basic rent. So again, capping that and making the playing field a little bit more level for prospective tenants who aren't able to offer as much upfront.

One interesting thing I came across when I was researching how eviction is dealt with in European countries is that in some countries there is just a complete moratorium on eviction for certain periods. So France in particular has a moratorium on evictions, residential evictions I should say, during the winter period from the 1st of November to the 31st of March each year. Now that's quite a long period. And I can see Iris, you're looking quite surprised.

IFKC: Yeah, I mean, that's, that's what, that's a third of the year, isn't it?

KZ: It really is, yes.

IFKC: It's incredible.

KZ: And the idea is that for that period, and it's not just in the residential letting sector, energy suppliers also have to keep providing water, electricity, and gas, even if there are unpaid bills for that period. The idea is that you can recover any arrears owing for that period thereafter. I'm not sure how much consolation that provides landlords and the energy suppliers.

IFKC: Well, I mean, we know from our own experience of cases that the difference between the right to recover arrears and nonpayment of other charges and the reality of actually recovering those things is very different.

KZ: And there are some exceptions to that moratorium, but they are very limited. So, primarily, it's if somebody has been evicted by court order, perhaps in the context of domestic violence during that period, or if you're squatting in a residential property. But largely everything just stops. Even if a court order is made in that period, it just can't be enforced until April.

IFKC: And that's not a temporary thing to do with the pandemic, that's just a feature.

KZ: No, that's a yearly feature. There is a provision in the law that effectively it can be revisited as necessary. So were there to be another pandemic, perhaps that could be extended, but really that's a feature of the system.

IFKC: It's fascinating how different countries approach these problems. Well, Karolina, all of those important topics of termination of tenancies, rent controls, deposits, those are fascinating context for the Renters' Rights Bill.

Can I just throw in a bit of a funny point that I discovered while I was doing my United States renters' rights research?

KZ: Please do.

IFKC: Which I think is fascinating, which is there are two states, maybe others, but I found certainly two states where tenants have to be given something that is a bit like the 'How to rent' booklet that we have here that tenants have got to be given as a matter of law in England.

So in Maryland, there is a document called the Tenants Bill of Rights that has to be given to a tenant at the start of the tenancy. But the one that is fascinating is New Jersey, which is quite a pro tenant, tenant friendly regime. So, New Jersey, they enacted a law during the pandemic called the Truth in Renting Act.

KZ: Ooh, good name.

IFKC: Which I think is a great name.

KZ: Much like Home Truths.

IFKC: Much like Home Truths, it's a good name. And part of the Truth in Renting Act is the creation of a Truth in Renting Guide. Which has to be provided to all new tenants. Unlike the 'How to rent' booklet, I've looked at this thing. It's really long.

It's 55 pages long. It's very technical and full of case law and references to law, which I think most normal people would find impossible to read. But the thing that really fascinated me about this guide is that it lists the things that new tenants in New Jersey have to be given when they start a tenancy.

Are you ready for this list?

KZ: I'm very ready.

IFKC: It's fascinating. Number one - a lead paint approved information pamphlet. Apparently there's a problem in old properties all over the United States with dangerous lead paint. So there is a lead paint approved information pamphlet that every tenant has to be given in New Jersey.

There is a truth in renting statement. Maybe that's this guide, maybe that's something else, I don't know. There's a flood zone notification.

KZ: Oh no.

IFKC: An information notice about child protection window guards.

KZ: Okay.

IFKC: Notification about bed bugs.

KZ: This is getting very specific.

IFKC: Notification about late fees.

KZ: Oh.

IFKC: Or information about late fees. Information about dishonoured payment fees.

KZ: Okay.

IFKC: And a domestic violence termination policy. So if you are a tenant in New Jersey, you are entitled to information booklets about those eight things.

KZ: Wow.

IFKC: When you start your tenancy.

KZ: That is very fascinating. And I suppose that's sort of the flip side of what's been proposed in the Renters' Rights Bill with regards to landlords and having a system online that they can access, which is a central body of information informing them of all their obligations towards tenants.

I suppose this is the equivalent for tenants really, isn't it?

IFKC: It is. I mean, it's, this is what happens I think when you have a legal system where there are lots and lots and lots of different rights. There has to be a way to get that information out to the, the punter, the landlord or the tenant who is trying to rent or trying to let a property.

Okay, well, what, what conclusions can we come to in this introductory podcast then, Karolina?

KZ: Well, I think the main thing to say is that we are still quite a long way away from this bill coming into force, and it may well go through some substantive changes between now and then. So watch this space.

IFKC: Absolutely. And to that end, let me say that you should join us for our next instalment of Home Truths, the housing law podcast from 42BR Barristers, when we're going to be looking at the end of no fault evictions under the Renters' Rights Bill, and then future podcasts will talk about other specific elements of the bill as well.

KZ: You can find our podcasts on Apple Podcasts, Spotify and the Chambers' website. Thank you very much for listening. And thank you, Iris, for joining me to talk about the Renters' Rights Bill.

IFKC: Thank you, Karolina, for joining me to talk about the Renters' Rights Bill and thank you for looking up all that interesting European Law.

KZ: You're very welcome.